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JUL 24 1961
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IN THE

Supreme Court of the United States

No. 253

FRANKLIN W. DURGIN and CATHERINE DURGIN, *Petitioners,*

v.

W. R. STOFFEL, LAVINIA STOFFEL and HAL R. STOFFEL, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

FRANKLIN W. DURGIN and
CATHERINE DURGIN
Post Office Box 722
Sarasota, Florida
In proper persons

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Your Petitioners, Franklin W. Durgin and Catherine Durgin, respectfully pray for a Writ of Certiorari to the Florida Supreme Court to review the Order of that Court:

(a) This case concerns your petitioners' SUIT FOR RESCISSION of an alleged fraudulent real estate transaction which was filed and taken successively into the following Courts in Florida:

DeSoto County Circuit Court—Case No. 9682

District Court of Appeal, 2nd District—Case No. 1867, reported at 126 So. 2d 612

Supreme Court of Florida

(b) The grounds on which the jurisdiction of this Court is invoked are:

(1) the date of the order of the Supreme Court of Florida is April 27, 1961 and the time of entry April 27, 1961.

(2) There are no orders respecting a rehearing by the Supreme Court of Florida or granting an extension of time within which to petition for certiorari.

(3) The statutory provision believed to confer on the Supreme Court of the United States jurisdiction to review the order in question by writ of certiorari is 28 USC, Section 2101(c).

(c) The questions presented for review are:

(1) Following the filing by your petitioners in the Circuit Court in DeSoto County, Florida, of a SUIT FOR RESCISSION of an alleged fraudulent real estate transaction, containing averments of facts pointing to misrepresentation, concealment and fraud by respondents, is it not a denial of due process of law and or denial of equal protection of the law for the DeSoto County Florida Circuit Court, upon hearing respondents' Motion to Dismiss said suit on the ground it does not state a cause of action, to accept oral misrepresentations by respondents' Attorney that the decision of the Florida Supreme Court in Firstbrook v. Buzbee, et al, 132 So 673 was a precedent for dismissing the complaint for rescission, and to act on said misrepresentation by dismissing the suit for rescission without a hearing on the merits of the complaint and without the Court reading said decision to find out what the Florida Supreme Court really held.

(2) Following the filing by your petitioners in the Circuit Court in DeSoto County, Florida, of a SUIT FOR RE-

scission of an alleged fraudulent real estate transaction containing averments of facts pointing to misrepresentation, concealment and fraud by respondents, is it not a denial of due process of law and/or denial of equal protection of the law for the DeSoto County Florida Circuit Court, upon hearing respondents' Motion to Dismiss said suit on the ground it does not state a cause of action, to accept oral misrepresentations by respondents' attorney that decisions of the Florida Supreme Court were precedents for dismissing the complaint for rescission, to permit respondents' Attorney to pick up the books containing the decisions and leave the hearing room before your petitioners had an opportunity to read the decisions contained in the books and complete their reply, to permit another attorney to interrupt and begin the discussion of a different case before the Court, and to act on said misrepresentations upon the return of respondents' attorney by dismissing the suit for rescission without first finding out what the decisions really held?

(d) The Constitutional provision is as follows:

Amendment XIV, Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(e) This case concerns a fraudulent real estate transaction wherein the respondents, above-identified as the Stoffels, induced your petitioners to pay over $5,632.50 and sign a mortgage note for $10,117.50 more, in exchange for a warranty deed covering 120 acres of land according to the original United States Government Survey. The Stoffels, at the time they signed

the Warranty deed, had possession of only 98 acres. The covenants in the warranty deed were knowingly and intentionally broken at the time the Stoffels signed same as evidenced by the following averments of facts stated in your petitioners' complaint for rescission. Prior to the Stoffels' signing of the warranty deed, Mr. W. R. Stoffel sold a strip off the East end of the 120 acre tract to Bowser, told the Bowser surveyor that the Bowser fence under construction was over the boundary of the strip sold but permitted the fence to be built and to remain as an encroachment against the East end of the land the Stoffels later sold to your petitioners. The Stoffels also had, long prior to the present transaction, agreed to a boundary at the West end of the tract different from that established by the U. S. Government Survey and reducing the West end of the tract by about 20 acres. Long prior to signing the Warranty Deed, Mr. Hal R. Stoffel helped move a Stoffel fence remotely spaced beyond the West end of the 120 acre tract in an adjustment compensating the Stoffels on a remote Stoffel tract for the 20 acre encroachment against the West end of the 120 acre tract. Immediately following settlement and the paying over by petitioners of 29% of the purchase price to Lewis E. Purvis, the Stoffel Attorney, Hal R. Stoffel, who had been drinking and was under the influence of liquor in the office of his Attorney, turned from Attorney Purvis to your petitioners and said "There are a number of things wrong with this property but I will make them right." The Circuit Court dismissed your petitioners' complaint for rescission without a hearing on its merits on motion that the complaint for rescission did not state a cause of action.

(f) In the DeSoto County Circuit Court, which was the Court of original jurisdiction, the only proceeding following the filing of your petitioners' SUIT FOR RESCISSION was the hearing on respondents' Motion to Dis-

miss, and it was the procedure at this hearing that raised the federal questions of denial of due process of law and denial of equal protection of the law. At the hearing, the Circuit Court permitted respondents' Attorney to orally misinterpret decisions purportedly being read from books, allowed respondents' Attorney to pick up the books containing the decisions and leave the room so that your petitioners could not read them, denied time to your petitioners to complete their reply, permitted another Attorney to begin with another case and, upon return of respondents' Attorney with the typed Order, granted respondents' Motion to Dismiss without reading the decisions. The Federal questions of denial of due process of law and denial of equal protection of the laws was raised in your petitioners' Assignments of Error on appeal from the Circuit Court to the District Court of Appeal, as follows: Paragraph 5 of your petitioners' Assignments of Error states that "the Court erred in accepting oral misrepresentations of the above-identified decisions of the Florida Supreme Court without reading said decisions to find out what the Florida Supreme Court actually held." Paragraph 6 states "the Court erred in permitting defendants' Attorney to orally misinterpret the above-identified decisions of the Florida Supreme Court and then pick up the books containing the decisions and leave the room before plaintiffs had an opportunity to read the decisions and complete their argument."

The District Court of Appeal passed on the federal questions raised in your petitioners' Assignments of Error by handing down a per curiam opinion comprising the one word "AFFIRMED".

Your petitioners again raised the federal questions in their petition for rehearing in the District Court of Appeal by stating the decision of the District Court of Appeal is in direct conflict with and militates against Section 4 and 12 of the Declaration of Rights of the Florida Constitution guaranteeing that the Florida Courts

shall be open to everyone and guaranteeing due process of law in the Florida Courts and that the decision is also in direct conflict with Amendment XIV of the Constitution of the United States guaranteeing equal protection under law and due process of law in the Florida Courts. Also the Petition for Rehearing stated that petitioners have been denied a hearing on the merits by improper and unusual procedures, and that the Florida and United States Constitutions must be followed by the Court of Appeals for the 2nd District. The District Court of Appeals passed on the federal questions by ordering that the petition for rehearing be denied.

Your Petitioners again raised the federal questions in their petition to the Supreme Court of Florida for a Writ of certiorari by stating, at the top of page 4 of said petition, that the decision of the District Court of Appeal, 2nd District, which petitioners seek to have reconsidered is in direct conflict with and militates against Sections 4 and 12 of the Declaration of Rights of the Florida Constitution guaranteeing that the Florida Courts shall be open to everyone and guaranteeing due process of law in the Florida Courts. The decision is also in direct conflict with Amendment XIV of the Constitution of the United States guaranteeing equal protection of the laws and due process of law in the Florida Courts. The petition also stated that your petitioners have been denied a hearing on the merits thereof by improper and unusual procedure in the lower Court, and that the Florida and United States Constitutions control and must be followed by the lower Courts.

The Supreme Court of Florida passed on the federal questions raised by your petitioners by Ordering that the Petition be denied.

(h) At the hearing on the Motion to Dismiss your petitioners' COMPLAINT FOR RESCISSION, respondents' Attorney orally misrepresented decisions of the Florida Supreme Court as precedents for dismissing the SUIT FOR RESCISSION

and assured the Court that your petitioners' only remedy was to sue for damages in a case at law. Your petitioners started to point out to the Court that their COMPLAINT FOR RESCISSION averred facts showing fraud, misrepresentation and concealment by respondents in the real estate transaction wherein your petitioners were induced by respondents to pay over $5,632.50 and grant a mortgage for $10,117.50. Before your petitioners had an opportunity to see the text of the decisions orally misrepresented by respondents' Attorney or complete their remarks to the Court, respondents' attorney picked up his papers and the books containing the decisions and left the hearing room. The Court had not read the decisions orally misrepresented by respondents' attorney and had not adjudicated any decision on the Motion to Dismiss, but while your petitioners were still presenting their argument to the Court, the Judge permitted another attorney to interrupt and begin the discussion of a different case before the Court. About a half-hour later, respondents' Attorney returned to the hearing room with the typed Order dismissing your petitioners' SUIT FOR RESCISSION which the Judge then signed without having read the decisions. After signing the Order dismissing the case the Judge wrote on the Order "with right to amend" and explained this was done to require your petitioners to abandon the COMPLAINT FOR RESCISSION in Equity and institute a suit for damages in a law Court, in accordance with the statement of the law by respondents' Attorney during the Attorneys' oral misrepresentation of the Florida Supreme Court decisions, Firstbrook v. Buzbee, et al, and White v. Crandall, et al. Among the grounds for appeal to the District Court of Appeal of the State of Florida and for Petition to the Supreme Court of Florida for Writ of Certiorari, your petitioners included that the procedure in the Circuit Court in and for DeSoto County, Florida, did not afford your petitioners an opportunity to be heard before the issues were decided, and the affirmation by the District Court of Appeal, 2nd District, plus the denial

by the Supreme Court of Florida of the petition for Writ of Certiorari constitute denial of due process of law.

Rule 19, paragraph 1(a) of the Revised Rules of the Supreme Court of the United States specifies that among the special and important reasons for granting a review on Writ of Certiorari is the reason that a State Court has decided a federal question in a way probably not in accord with applicable decisions of the Supreme Court of the United States.

Decisions of the Supreme Court of the United States believed applicable under Rule 19, paragraph 1 (a) are:

Hovey v. *Elliott,* 167 U.S. 409; 42 L. Ed. 215; 17 Sup. Ct. Rep. 841, holding that due process of law signifies a right to be heard in one's defense.

Twining v. *New Jersey,* 211 U.S. 78; 53 L. Ed. 97; 29 Sup. Ct. Rep. 14, holding that due process requires the Court which assumes to determine the rights of parties shall have jurisdiction and that there shall be notice and opportunity for hearing given the parties; and

Mullane v. *Central Hanover B & T Co.,* 339 U.S. 306; 94 L. Ed. 865; 70 S. Ct. 652, holding that the due process clause requires at a minimum that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

Your Petitioners were not given fair and reasonable opportunity to be heard and to present their claim before the issues were decided by the DeSoto County Circuit Court, in accordance with the above cited decisions of the Supreme Court of the United States.

FRANKLIN W. DURGIN, *Petitioner*
CATHERINE DURGIN, *Petitioner*

In proper persons

Franklin W. Durgin being duly sworn, deposes and says he is one of the petitioners herein; that he served a copy of the foregoing petition on respondents' attorney, Lewis E. Purvis, by mailing a copy in a duly addressed envelope with postage prepaid to:

Lewis E. Purvis
Post Office Box 226
Arcadia, Florida

Subscribed and sworn to before me this day of July 1961.

Notary Public